

Certification

Case No.
2014-0005-R04

I have read the foregoing attached statement, consisting of 7 pages, and it is true and complete to the best of my knowledge and belief. In making this statement, I understand Section 1001, Title 18 of the U.S. Code which states:

"Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."

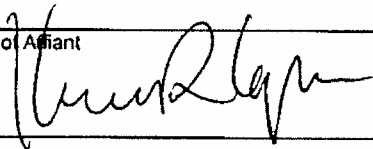
Privacy Act Notice

Privacy Act Notice. The collection of this information is authorized by The Equal Employment Opportunity Act of 1972, 42 U.S.C. 2000e-16; The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 633a; The Rehabilitation Act of 1973, as amended, 29 U.S.C. 794a; and Executive Order 11478, as amended. This information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. As a routine use, this information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the Agency is a party or has an interest; to a government agency in order to obtain information relevant to an Agency decision concerning employment, security clearances, contracts, licenses, grants, permits or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants or other benefits; to a congressional office at your request; to an expert, consultant, or other person under contract with the Agency to fulfill an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of Agency finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1614; to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; and to a labor organization as required by the National Labor Relations Act. Under the Privacy Act provision, the information requested is voluntary for the complainant, and for Agency employees and other witnesses.

Declaration

I declare, under penalty of perjury, that the foregoing is true and correct.

Signature of Affiant



Date Signed

7/8/2014

EEO Investigative Affidavit (Witness)

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1. Affiant's Name (First, Middle, Last) Kenneth LaPierre		2. Employing Facility Region 4	
3. Position Title Deputy Assistant Regional Administrator	4. Grade Level	5. Work Address and ZIP+4 61 Forsyth Street, SW Mail Code: 9T25 Atlanta, GA 30303-8960	6. Unit Assigned Region 4

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office at your request; to an expert, consultant, or other person under contract with the Agency to fulfill an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of the Agency's finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1614; to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; and to a labor organization as required by the national labor Relations Act. Under the Privacy Act provision, the information requested is voluntary for the complainant, and for the Agency's employees and other witnesses.

7. Statement

Complainant alleges she was discriminated against and subjected to hostile work environment harassment, based on her race (White), religion (Catholic), and National Origin (Portuguese) when:

- a) On August 21, 2013, her 1st level supervisor, Ms. Naima Halim-Chestnut, Region 4 Equal Employment Opportunity Officer, issued a Guidance Notice to her;**
- b) On October 23, 2013, her supervisor, Ms. Halim-Chestnut, issued a Letter of Reprimand to her;**
- c) On January 31, 2014, her supervisor, Ms. Halim-Chestnut, refused to immediately remove the Letter of Reprimand from her official personnel file.**

Complainant further alleges she experienced continued harassment and retaliation when:

- d) On March 11, 2014, her supervisor, Ms. Halim-Chestnut, sent a harassing email to her;**
- e) On May 7, 2014, Mr. Kenneth LaPierre, Deputy Assistant Regional Administrator, issued her a Notice of Proposed Suspension for failure to follow supervisory instructions and breach of privacy and disclosure of confidential information.**

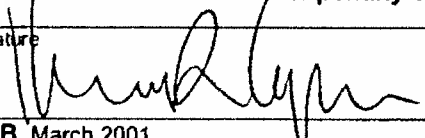
Q1. What is your full name? (first, middle initial and last)

A1. Kenneth R. Lapierre

Q2. State your position title, pay grade, work unit, work location address, work telephone number, and work email address.

A2. Assistant Regional Administrator, ES-00, Office of Policy and Management, U.S. Environmental protection Agency, Region 4, 61 Forsyth Street, Atlanta, GA 30303

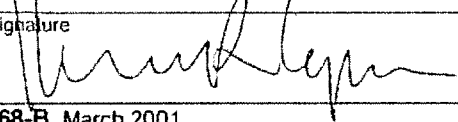
I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature 	Date Signed 7/8/2014
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- Q3. Are you aware of Ms. McKinley's race? If yes, identify her race (presumed) and indicate when and how you became aware of her race. If not, what do you perceive her race to be?
- A3. I presumed Ms. McKinley's race as white. I became aware of this when we first met around the 2008 timeframe.
- Q4. What is your race?
- A4. White
- Q5. Are you aware of Ms. McKinley's religion? If yes, identify her religion (presumed) and indicate when and how you became aware of her religion. If not, what do you perceive her religion to be?
- A5. I did not know nor did I perceive of Ms. McKinley's religion until it was disclosed to me as part of this process.
- Q6. What is your religion?
- A6. Roman Catholic
- Q7. Are you aware of Ms. McKinley's national origin? If yes, identify her national origin (presumed) and indicate when and how you became aware of her national origin. If not, what do you perceive her national origin to be?
- A7. I did not know nor did I perceive of Ms. McKinley's national origin until it was disclosed to me as part of this process.
- Q8. What is your national origin?
- A8. American. I was born and raised in Rhode Island. My parents were both born and raised in Rhode Island.
- Q9. Are you aware of Ms. McKinley being involved in prior EEO activity? If so, indicate when and how you became aware of her prior EEO activity.
- A9. No.
- Q10. Have you been named by Ms. McKinley as a Responding Management Official (RMO) or witness in a prior EEO complaint that she filed? If so, identify the case number(s); identify the issue(s) involved in the complaint; and explain your involvement in her EEO activity?
- A10. No.
- Q11. When and how did you become aware of this EEO complaint?
- A11. Not applicable

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature 	Date Signed 7/8/2014
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- Q12. Have you participated in any EEO activity? (EEO activity includes filing a charge, testifying, assisting another, or participating in a discrimination proceeding; or otherwise opposing discrimination.). Please identify the case number(s) and date(s) for your EEO activity.
- A12. It a regular and routine part of my duties as both the Assistant Regional Administrator and the regional Deputy Civil Rights Official to ensure that all Region 4 employees are aware of our Civil Rights and Diversity and Inclusion programs and that the region complies with all EEO requirements.

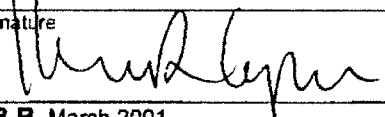
In addition to this proceeding, in March 2014, I provided an affidavit in Case No. 2013-0090-R04.

- Q13. What was your work relationship with Ms. McKinley from August 2013 through March 14, 2014? (Immediate supervisor, second level supervisor, no work relationship, etc.)
- A13. Second Level Supervisor.

Claim c): Ms. McKinley alleges she was subjected to discrimination and hostile work environment harassment based on her race (White), religion (Catholic), and National Origin (Portuguese) when: c) On January 31, 2014, her supervisor refused to immediately remove the Letter of Reprimand from her official personnel file.

- Q14. Did Ms. McKinley or anyone else request that you remove her Letter of Reprimand, dated October 23, 2013, from her official personnel file? If so, indicate who made the request; when and why the request was made; and what response, if any, you provided to them and why.
- A14. Yes. In November 2013, I met with Ms. McKinley to discuss her concerns. During our discussion, she requested that she be allowed to transfer to another position within Region 4, either permanently or temporarily, and that the Letter of Reprimand issued by her supervisor be removed from her official personnel file. During our meeting, I relayed to Ms. McKinley that I would work to find her a temporary (detail) assignment for a 90 or 120 day period to assist her in her career development goals but that I was unable to support her request for a permanent reassignment. I told her that she would need to use the competitive selection process to be reassigned permanently. I made the decision to support Ms. McKinley's request for a temporary detail assignment to help relieve the immediate stress of the situation and not because of any discriminatory actions or unfair treatment by her immediate supervisor. I was clear with Ms. McKinley that the detail would be temporary and that she would have to return to her position of record in the Office of Civil Rights when it was completed. In my discussions with Ms. McKinley about the Letter of Reprimand staying in her file, she initially stated that she was okay with it staying in her file for some period of time but not the full two year period. In a subsequent discussion, Ms. McKinley made it clear to me that she wanted it removed immediately. I informed Ms. McKinley that it is my personal belief that two years is an

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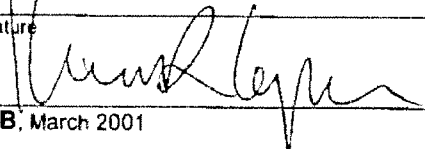
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excessive period of time for the Letter of Reprimand to remain in an official file if the behaviors and actions identified in the reprimand are addressed appropriately by the employee and there are no further occurrences. At that point, Ms. McKinley informed me that she wanted the Letter of Reprimand removed from her file immediately since she felt there was no basis for the action in the first place. We did not agree on this point.

If you were not aware that Ms. McKinley requested that her Letter of Reprimand be removed from her official personnel file, please write "Not Applicable" for answers #15-21.

- Q15. During the period of January through February 2014, did you refuse to remove the Letter of Reprimand immediately? If so, why?
- A15. Yes. I did not remove the Letter of Reprimand from Ms. McKinley's file because I did not agree with her assertion that there was no basis for the letter in the first place. Please see my response to Question #14 of this affidavit.
- Q16. Has Ms. McKinley's Letter of Reprimand been removed from her official personnel file? If so, indicate who removed it; and explain when and why it was removed.
- A16. No. To my knowledge, the Letter of Reprimand is still in Ms. McKinley's personnel file.
- Q17. What policy and/or regulation(s) was/were relied upon in determining to not remove Ms. McKinley's Letter of Reprimand, dated October 23, 2013, from her official personnel file? **(Explain what these policies say).**
- A17. EPA Order 3120.1 dated 9/20/85. Conduct and discipline. This policy states that official written reprimand's be filed in the employees personnel file for a period up to two years.
- Q18. Was Ms. McKinley's race a factor when her Letter of Reprimand, dated October 23, 2013, was not immediately removed from her official personnel file? If so, explain.
- A18. No.
- Q19. Was Ms. McKinley's religion a factor when her Letter of Reprimand, dated October 23, 2013, was not immediately removed from her official personnel file? If so, explain.
- A19. No.
- Q20. Was Ms. McKinley's national origin a factor when her Letter of Reprimand, dated October 23, 2013, was not immediately removed from her official personnel file? If so, explain.
- A20. No
- Q21. Was Ms. McKinley's EEO activity a factor when her Letter of Reprimand, dated October 23, 2013, was not immediately removed from her official personnel file? If so, explain.
- A21. No

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature 	Date Signed 7/8/2014
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Form 2568-B, March 2001

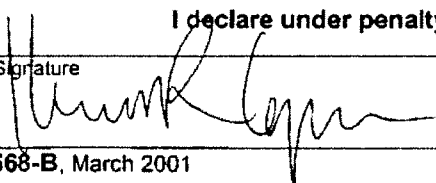
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Claim e): Ms. McKinley alleges she was subjected to continued harassment and retaliation when: e) On May 7, 2014, Mr. Kenneth LaPierre, Deputy Assistant Regional Administrator, issued a Notice of Proposed Suspension to Complainant for failure to follow supervisory instructions and breach of privacy and disclosure of confidential information.

- Q22. Was Ms. McKinley issued a Notice of Proposed Suspension on May 7, 2014? If yes, please describe your involvement with issuing the Notice of Proposed Suspension to Ms. McKinley. If not, please identify by name, title, and work location the management official(s) who was/were responsible for issuing the Notice of Proposed Suspension to her.
- A22. On May 7, 2014, I issued a Notice of Proposed Suspension to Ms. McKinley for her failure to follow her supervisor's instructions and for a breach of privacy and disclosure of confidential information.
- Q23. Why was a Notice of Proposed Suspension issued to Ms. McKinley on May 7, 2014?
- A23. Ms. McKinley was issued a Notice of Proposed Suspension for her failure to follow her supervisor's instructions and for a breach of privacy and disclosure of confidential information.
- Q24. Ms. McKinley alleges she should not have been issued the Notice of Proposed Suspension because discussing the name of the person who was voluntarily involved in a mediation (not part of an EEO case or investigation) was not confidential information. Is this accurate? Explain.
- A24. No, this is not accurate. The fact that an employee was voluntarily participating in an Alternate Dispute Resolution proceeding is not material to the obligation of all parties and the Office of Civil Rights staff to keep the matter confidential.
- Q25. Ms. McKinley alleges that the penalty of a 5 day suspension is excessive. Explain why a 5 day suspension was proposed instead of a reprimand or shorter suspension.
- A25. In selecting the proposed penalty, I considered all information known to me including the Table of Offenses and Penalties contained in EPA Order 3120.1. I also considered her position, the nature and seriousness of the offense and their relation to her duties, the adequacy and effectiveness of alternative penalties to deter this type of conduct, her length of service and work record, the clarity with which Ms. McKinley was on notice of any directive or instruction. I also considered the fact that in August 2013, Ms. McKinley received a warning letter for similar behavior and that Ms. McKinley also received an Official Reprimand in October 2013 for additional similar behavior.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature



Date Signed

7/8/2014

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Q26. Has a decision letter been issued regarding the Proposed Suspension? If so, indicate when the decision letter was issued; who issued it; and what the decision was regarding the Proposed Suspension.

A26. I have no knowledge of a decision letter being issued in this matter.

Q27. What policy and/or regulation(s) was/were relied upon when Ms. McKinley was issued a Notice of Proposed Suspension on May 7, 2014? (**Explain what these policies say**).

A27. EPA Order 3120.1 dated 9/20/85. This EPA Order addresses conduct and discipline within EPA.

Q28. Was Ms. McKinley's race a factor when she was issued a Notice of Proposed Suspension on May 7, 2014? If so, explain.

A28. No

Q29. Was Ms. McKinley's religion a factor when she was issued a Notice of Proposed Suspension on May 7, 2014? If so, explain.

A29. No

Q30. Was Ms. McKinley's national origin a factor when she was issued a Notice of Proposed Suspension on May 7, 2014? If so, explain.

A30. No

Q31. Was Ms. McKinley's EEO activity a factor when she was issued a Notice of Proposed Suspension on May 7, 2014? If so, explain.

A31. No

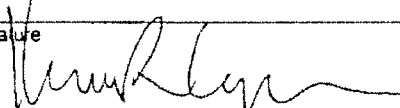
Q32. Please list any other employees under your chain of command who were given a Notice of Proposed Suspension for similar conduct as Complainant during the period May 2012 through May 2014. Please provide each employee's full name, position title, series, pay grade, race (presumed), religion (presumed), and national origin (presumed); indicate whether each employee has any EEO activity, if known; and indicate when each incident occurred.

A32. None that I am aware of.

Q33. Please list any other employees under your chain of command who allegedly failed to follow supervisory instructions, breeched privacy, and/or disclosed confidential information and were not given a Notice of Proposed Suspension during the period of May 2012 through May 2013. Please provide each employee's full name, position title, series, pay grade, race (presumed), religion (presumed) and national origin (presumed); indicate whether each employee has any EEO activity, if known; and explain why each employee was not issued a Notice of Proposed Suspension.

A33. None that I am aware of.

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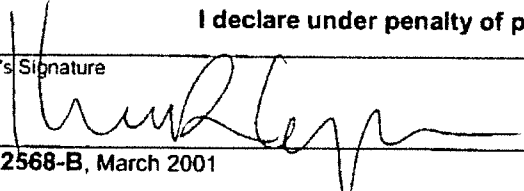
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- Q34. Did Ms. McKinley (or anyone acting on behalf of Ms. McKinley) advise you that your actions constituted harassment and/or a hostile work environment? If yes, on what date did you become aware of this allegation; what were you told; and what was your response and why?
- A34. No. The request to complete this affidavit is my first time hearing that Ms. McKinley viewed the Notice of Proposed Suspension that I issued to her as harassment.
- Q35. Are you aware of Ms. McKinley (or anyone acting on behalf of Ms. McKinley) notifying any other management official(s) about the alleged harassment? If so, whom did he/she inform of his/her concerns and on what date did he/she notify the management official?
- A35. No.
- Q36. Was an investigation conducted into Ms. McKinley's allegation of harassment? If so, explain when the investigation was conducted; who conducted the investigation; and what the outcome of the investigation was (ex: discipline was issued)? If an investigation was not conducted into Ms. McKinley's allegation of harassment, explain why an investigation was not conducted.
- A36. Not that I am aware of. The request to complete this affidavit is my first time hearing that Ms. McKinley viewed the Notice of Proposed Suspension that I issued to her as harassment.
- Q37. Have you received training on anti-harassment/hostile work environment while employed by the EPA? If so, when did you receive the training?
- A37. Yes. I completed Equal Employment Opportunity and Civil Rights training on February 15, 2008, and Federal Employee Antidiscrimination Act of 2002 training (NO FEAR) on June 4, 2012.
- Q38. What specific policy or contract provision(s) govern harassment in the workplace? (**Explain what these policies say**).
- A38. U.S. Environmental Protection Agency's Anti-Harassment Policy dated July 13, 2011 – Prohibits harassment of any kind in the workplace.

U.S. Environmental Protection Agency's 2013 Equal Employment Opportunity Policy Statement – prohibits discrimination based on race; color; sex, including pregnancy, sex stereotyping, gender identity or gender expression; national origin; sexual orientation; physical or mental disability; age; protected genetic information; status as a parent; marital status; political affiliation or retaliation based on previous EEO activity. This policy also states that EPA will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment.

----- END OF QUESTIONS -----

I declare under penalty of perjury that the foregoing is true and correct.	
Affiant's Signature 	Date Signed 7/8/2014
Form 2568-B, March 2001	

